

ST 05-0018-PLR 10/12/2005 MANUFACTURING MACHINERY & EQUIPMENT

The taxpayer must be able to establish through adequate records that the machinery or equipment in question is used over 50 percent in an exempt manner in order to claim the manufacturing machinery and equipment exemption from sales tax. 86 Ill. Adm. Code 130.330. (This is a PLR).

October 12, 2005

Dear Xxxxx:

This letter is in response to your letter dated April 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This letter is a Private Letter Ruling Request for the Illinois Department of Revenue ('Department') to issue a formal opinion concerning the taxability under the Illinois Retailers Occupation Tax Act of Taxpayer's purchase of machinery to be used in the manufacture of customized fittings for heating and ventilation systems in commercial buildings. This request is made under Illinois Regulation Section 1200.110. Taxpayer is not currently under audit or investigation concerning the matter for which this request is being made. Enclosed is a Power of Attorney authorizing my representation of Taxpayer.

To the best of Taxpayer's knowledge, the Department has not previously ruled on the matter or similar issue for Taxpayer or a predecessor and none of its representatives have previously submitted the same or a similar issue to the Department but withdrawn it before a Letter Ruling was issued.

I. FACTS

Taxpayer is a heating and cooling contractor who wishes to purchase certain machinery and equipment to be used in the manufacturing of customized fittings for heating and ventilation systems in commercial business. Specifically, Taxpayer desires to purchase a Cutting System and related parts as more fully described on the attached Proposal No. 102403-245, marked as Exhibit A ('Machinery'). The Machinery takes straight sheet metal pieces and makes the custom fittings needed to complete the jobs of the Taxpayer.

II. OPINION REQUEST

Taxpayer requests a ruling that Taxpayer's purchase of the Machinery is exempt from Illinois Sales Tax based upon the 'manufacturing machinery and equipment exemption' under Section 130.330 of the Administrative Code.

III. RELEVANT LAW AND ANALYSIS

The Illinois Retailers Occupation Tax Act is imposed upon the sale of tangible personal property from a retailer. There are certain exemptions to the imposition of such sales tax, including the manufacturing machinery and equipment exemption. Under Section 130.330 of the Administrative Code sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease are exempt from sales tax. The machinery or equipment must be used in a process or activity commonly regarded as manufacturing which includes processing, fabricating and refining.

The Administrative Code defines manufacturing as follows: the production of any article of tangible personal property, whether such article is the finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating or refining.

Specifically, the Administrative Code provides that the exemption applies to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. The process by which sheet metal is assembled into custom made fittings clearly falls into the definition of manufacturing, as evidenced by State Tax Letter Ruling ST90-0296. In Letter Ruling ST90-0296 the manufacturer of metal specialty products which involves cutting, punching, bending, forming and welding of sheet metal into special products was considered an exempt activity and consequently the machinery utilized in such process was not subject to tax.

The Administrative Code further provides that the tangible personal property so manufactured by the equipment *must be used for wholesale or retail sale or lease*. In this case, the Taxpayer uses the Machinery to manufacture the Property which the Taxpayer then sells either at wholesale or retail. Wholesale sales comprise approximately five percent (5%) to ten percent (10%) of Taxpayer's sales of the Property. The retail sales of the Property are directly to the end-users of the Property in connection with the installation of heating and ventilation systems in commercial

buildings. The end-user pays sales tax on the purchase of the Property separate and distinct from the cost of the installation.

IV. CONCLUSION

Based upon the above, we believe that Taxpayer purchase of the Machinery is exempt from Illinois Sales Tax as the machinery is used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail by Taxpayer.

Thank you for your time and cooperation in this matter. If you need any additional information, please do not hesitate to call me.

DEPARTMENT'S RESPONSE

You have requested that the Department issue a ruling that Taxpayer's purchase of certain machinery and equipment is exempt from Illinois Sales Tax under the manufacturing machinery and equipment exemption set forth at 86 Ill. Adm. Code 130.330. Based upon the information provided, we are unable to issue the ruling requested.

The Department's regulation for the manufacturing machinery and equipment exemption from sales tax provides that "[n]otwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease." 86 Ill. Adm. Code 130.330(a). Machinery that is used primarily in an exempt process and partially in a nonexempt manner can qualify for the exemption; however, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50 percent in an exempt manner in order to claim the deduction. 86 Ill. Adm. Code 130.330(d).

The Department's regulation regarding construction contractors at 130.1940 provides that "[a] construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate." (86 Ill. Adm. Code 130.1940(c)). For example, a construction contractor does not incur Retailers' Occupation Tax liability on receipts from selling and installing screen doors and windows; ... heating systems or parts thereof, such as furnaces, stokers, boilers, heating pipes, etc.; ventilation systems or parts thereof; ... and other similar items. (86 Ill. Adm. Code 130.1940(c)(1)). In these situations, the construction contractor incurs Use Tax liability on the cost price of the tangible personal property that he uses.

In your letter of April 6, 2004, you indicated that Taxpayer is a heating and cooling contractor who takes straight sheet metal pieces and makes the custom fittings needed to complete his jobs. As we understand it, Taxpayer is manufacturing and assembling tangible personal property for his own use in fulfillment of his construction contracts ninety to ninety-five percent of the time. In order for the manufacturing machinery and equipment exemption to apply, the purchaser must be able to establish through adequate records that the machinery or equipment in question is used over 50 percent of the time to manufacture or assemble tangible personal property for wholesale or retail sale or lease. Taxpayer has not done so. As a result, when the Taxpayer uses the machinery and equipment described in your letter to straighten sheet metal pieces and make the custom fittings needed to complete his construction contractor jobs ninety to ninety-five percent of the time, that machinery and equipment does not qualify for the manufacturing machinery and equipment exemption.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.